

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Sean M. Blakely (SBN 264384)
sblakely@haineslawgroup.com
Joel M. Gordon (SBN 280721)
jgordon@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

Electronically Filed
Superior Court of California
County of San Bernardino
Rancho Cucamonga District
9/26/2024 1:00 PM
By: Brianna Rios, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

FRANCISCO TAFOLLA, on behalf of himself
and all others similarly situated,

Plaintiff,

vs.

E.S. KLUFT & COMPANY, INC., a Delaware
Corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No. CIVRS2400584

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 204, 558, 1182.12,
1194, 1194.2, 1197, 1198)**
- (2) FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194, 1198);**
- (3) MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (4) REST PERIOD VIOLATIONS
(LABOR CODE § 226.7, 516, 558);**
- (5) WAGE STATEMENT
VIOLATIONS (LABOR CODE §
226, *et seq.*);**
- (6) WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (7) UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); and**
- (8) CIVIL PENALTIES UNDER
THE PRIVATE ATTORNEYS
GENERAL ACT (LABOR
CODE § 2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Plaintiff Francisco Tafolla (“Plaintiff”), on behalf of himself and all others similarly
2 situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“Complaint”) against Defendant E.S. Kluft & Company, Inc., a Delaware Corporation, and
4 DOES 1 through 100, inclusive (collectively “Defendants”), and on information and belief alleges
5 as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
8 Complaint for recovery of unpaid wages and penalties under Labor Code §§ 201-204, 226, 226.7,
9 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and 2698 *et seq.*; California Business &
10 Professions Code § 17200 *et seq.*, and Industrial Welfare Commission Wage Order No. 1 (“Wage
11 Order 1”), in addition to seeking injunctive relief, declaratory relief, and restitution.

12 2. This Complaint is brought pursuant to California Code of Civil Procedure § 382.
13 The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdictional limits
14 of the Superior Court and will be established according to proof at trial.

15 3. This Court has jurisdiction over Defendants because, upon information and belief,
16 Defendants have sufficient minimum contacts in the State of California, or otherwise intentionally
17 avail themselves to the California market so as to render the exercise of jurisdiction over them by
18 the California courts consistent with the traditional notions of fair play and substantial justice.

19 **VENUE**

20 4. Venue as to each Defendant is proper in this judicial district pursuant to California
21 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions
22 complained of hereon occurred in the County of San Bernardino. Defendants own, maintain
23 offices, transact business, have agent(s) within the County of San Bernardino, and/or otherwise
24 are found within the County of San Bernardino, and Defendants are within the jurisdiction of this
25 Court for purposes of service of process.

26 **PARTIES**

27 5. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
28 Plaintiff was, and currently is, a California resident. Within the statute of limitations periods

1 applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-
2 exempt employee. Plaintiff was and is a victim of Defendants' policies and/or practices
3 complained of herein, lost money and/or property, and has been deprived of the rights guaranteed
4 by Labor Code §§ 201-204, 226, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198,
5 and 2698 *et seq.*; California Business & Professions Code § 17200 *et seq.*, and Wage Order No.
6 1, which sets employment standards for the "Manufacturing Industry."

7 6. Plaintiff is informed and believes, and based thereon alleges, that during the statute
8 of limitations periods relevant to each cause of action pled in this Complaint and continuing to
9 the present, Defendants were (and continue to be) in the business of manufacturing mattresses,
10 pillows, and mattress accessories within San Bernardino County, and employed Plaintiff and
11 other, similarly-situated non-exempt employees within San Bernardino County and the State of
12 California and, therefore, were (and are) doing business in San Bernardino County and the State
13 of California.

14 7. Plaintiff does not know the true names or capacities, whether individual, partner,
15 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
16 defendants are sued under such fictitious names. Plaintiff will seek leave from this Court to amend
17 this Complaint when such true names and capacities are discovered. Plaintiff is informed,
18 believes, and based thereon alleges that each of said fictitious defendants, whether individual,
19 partners, or corporate, was responsible in some manner for the acts and omissions alleged herein,
20 and proximately caused Plaintiff and the Classes (as defined in Paragraph 17) to be subject to the
21 unlawful employment practices, wrongs, injuries, and damages complained of herein.

22 8. Plaintiff is informed, believes, and thereon alleges that at all times mentioned
23 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

24 9. At all times mentioned herein, each of said Defendants participated in the doing
25 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
26 Defendants, and each of them, were the agents, servants, and employees of each and every one of
27 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned,
28 were acting within the course and scope of said agency and employment. Defendants, and each

of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

10. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of the Classes.

GENERAL FACTUAL ALLEGATIONS

11. Plaintiff was employed by Defendants as a non-exempt “Forklift Operator” or similarly titled position, from approximately August 24, 2022 until approximately July 27, 2023. Plaintiff’s job duties while employed by Defendants included driving a forklift and working in the shipping department transporting mattresses.

12. Defendants failed to provide Plaintiff and other putative class members with all legally compliant meal periods due to Defendants’ meal period policies/practices, which have frequently resulted in late (commencing after the fifth hour of work), short (less than 30 minutes), and missed meal periods. Moreover, Plaintiff’s meal periods were often interrupted due to work demands imposed by Defendants. Plaintiff was often not provided with meal periods that were a full 30 minutes of “net rest” in an area away from the work station that is appropriate for rest, which employers are required by the Wage Order to maintain for their employees to use during their meal and rest periods. In addition, Defendants failed to provide Plaintiff or other non-exempt employees with second meal periods on shifts over 10.0 hours. On those occasions when Plaintiff was not provided with all legally-required meal periods to which he was entitled, Defendants failed to compensate Plaintiff with the required meal period premium for each workday in which he experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief, during at least a portion of the putative class period, Defendants maintained no payroll code for paying meal period premiums under Labor Code § 226.7.

13. Defendants have also failed to authorize and permit all required rest periods for Plaintiff and other non-exempt employees. Specifically, Defendants have often failed to authorize

1 and permit a net 10-minute rest period for every four hours worked or major fraction thereof, and
2 Plaintiff and other non-exempt employees often have had to take short (less than 10 minutes) rest
3 periods, due to their workload. Defendants have also failed to provide Plaintiff and other non-
4 exempt employees from taking 10 minutes of net rest in areas away from the workstation
5 appropriate for rest, which employers are required by the Wage Order to maintain for their
6 employees to use during their meal and rest periods. Plaintiff's rest periods were also often
7 interrupted due to work demands. In addition, Defendants failed to provide Plaintiff and other
8 non-exempt employees with third rest periods on shifts over 10.0 hours. Despite failing to
9 authorize and permit Plaintiff and other non-exempt employees to take all rest periods to which
10 they are entitled, upon information and belief, during at least a portion of the putative class period,
11 Defendants maintained no mechanism for the payment of rest period premium payments as
12 required by Labor Code section 226.7 and did not pay Plaintiff or other non-exempt employees
13 any rest period premiums.

14 14. Defendants also failed to pay Plaintiff and other non-exempt employees for all
15 hours worked, including (but not limited to) by requiring and/or permitting employees to work
16 while off-the-clock, specifically during their meal and/or rest periods. This has resulted in
17 Plaintiff and other non-exempt employees not being paid all required wages for all hours worked,
18 including all minimum wages and overtime wages.

19 15. As a result of the above violations, Defendants have issued inaccurate wage
20 statements to Plaintiff and other non-exempt employees because, among other things, the wage
21 statements issued do not include all wages earned and fail to reflect meal and rest period premium
22 pay for all meal and rest period violations.

23 16. As a further result of the above violations, Defendants also failed to timely pay
24 Plaintiff and other former non-exempt employees all wages owed at the time of their respective
25 separations from employment.

26 **CLASS ACTION ALLEGATIONS**

27 17. **Class Definitions:** Plaintiff brings this action on behalf of himself and the
28 following Classes pursuant to § 382 of the Code of Civil Procedure:

- 1 a. The Minimum Wage Class consists of all of Defendants' current and former non-
2 exempt employees in California during the four years immediately preceding the
3 filing of the Complaint through the present.
- 4 b. The Overtime Class consists of all of Defendants' current and former non-exempt
5 employees in California who worked in excess of 8 hours in a work day and/or in
6 excess of 40 hours in a work week during the four years preceding the filing of the
7 Complaint through the present.
- 8 c. The Meal Period Class consists of all of Defendants' current and former non-
9 exempt employees in California who: (i) worked at least one shift in excess of 5.0
10 hours; and/or (ii) worked at least one shift in excess of 10.0 hours, during the four
11 years immediately preceding the filing of this Complaint through the present.
- 12 d. The Rest Period Class consists of all of Defendants' current and former non-
13 exempt employees in California who worked at least one shift of 3.5 hours or more,
14 during the four years immediately preceding the filing of this Complaint through
15 the present.
- 16 e. The Wage Statement Class consists of all members of the Overtime Class,
17 Minimum Wage Class, Meal Period Class, and/or Rest Period Class who were
18 employed by Defendants during the one year immediately preceding the filing of
19 this Complaint through the present.
- 20 f. The Waiting Time Class consists of all members of the Overtime Class, Minimum
21 Wage Class, Meal Period Class, and/or Rest Period Class, whose employment with
22 Defendants ended during the three years immediately preceding the filing of this
23 Complaint through the present.

24 18. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
25 joinder of all members would be unfeasible and not practicable. The membership of the classes
26 and subclasses are unknown to Plaintiff at this time; however, it is estimated that the Class
27 Members number greater than fifty (50) individuals as to each Class. The identity of such
28 membership is readily ascertainable via inspection of Defendants' employment records.

1 **19. Common Questions of Law and Fact Predominate/Well Defined Community**
2 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
3 situated employees, which predominate over questions affecting only individual members
4 including, without limitation to:

- 5 i. Whether Defendants paid at least the minimum wage for all hours worked to
6 members of the Minimum Wage Class;
- 7 ii. Whether Defendants violated the applicable Labor Code provisions, including, but
8 not limited to, §§ 510 and 1194 by requiring members of the Overtime Class to
9 perform overtime work and not paying for said work in accordance with the
10 overtime laws of the State of California;
- 11 iii. Whether Defendants provided all legally compliant meal periods to members of
12 the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- 13 iv. Whether Defendants provided all legally compliant rest periods to members of the
14 Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- 15 v. Whether Defendants provided meal and rest period premium payments for non-
16 compliant meal and rest periods;
- 17 vi. Whether Defendants furnished legally compliant wage statements to members of
18 the Wage Statement Class pursuant to Labor Code § 226; and
- 19 vii. Whether Defendants failed to pay members of the Waiting Time Class all of their
20 final wages at the time of separation of employment.

21 **20. Predominance of Common Questions:** Common questions of law and fact
22 predominate over questions that affect only individual members of the Classes. The common
23 questions of law set forth above are numerous and substantial and stem from Defendants' policies
24 and/or practices applicable to each individual class member, including their uniform policies
25 and/or practices dealing with payment for all hours worked and with overtime payment, and their
26 failure to provide lawful meal periods and authorize and permit lawful rest periods. As such, these
27 common questions predominate over individual questions concerning each individual class
28 member's showing as to their eligibility for recovery or as to the amount of their damages.

1 21. **Typicality:** Plaintiff's claims are typical of the Classes' claims because
2 Defendants employed Plaintiff as a non-exempt employee in California during the statutes of
3 limitation applicable to each cause of action pled in this Complaint. As alleged herein, Plaintiff,
4 like the members of the Classes, was deprived of all minimum wages for all hours worked, was
5 not provided all meal periods, was not authorized and permitted all rest periods, did not receive
6 premium pay for meal and rest period violations, was not paid all wages owed at termination of
7 employment, and was not provided with accurate, itemized wage statements.

8 22. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
9 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,
10 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of
11 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-
12 hour class actions in state and federal courts in the past and are committed to vigorously
13 prosecuting this action on behalf of the members of the Classes.

14 23. **Superiority:** The California Labor Code is broadly remedial in nature and serves
15 an important public interest in establishing minimum working conditions and standards in
16 California. These laws and labor standards protect the average working employee from
17 exploitation by employers who have the responsibility to follow the laws and who may seek to
18 take advantage of superior economic and bargaining power in setting onerous terms and
19 conditions of employment. The nature of this action and the format of laws available to Plaintiff
20 and members of the Classes make the class action format a particularly efficient and appropriate
21 procedure to redress the violations alleged herein. If each employee was required to file an
22 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
23 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
24 their vastly superior financial and legal resources. Moreover, requiring each member of the
25 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
26 employees who would be disinclined to file an action against their former and/or current employer
27 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
28 employment. Further, the prosecution of separate actions by the individual class members, even

1 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
2 with respect to the individual class members against Defendants herein; and which would
3 establish potentially incompatible standards of conduct for Defendants; and/or legal
4 determinations with respect to individual class members which would, as a practical matter, be
5 dispositive of the interest of the other class members not parties to adjudications or which would
6 substantially impair or impede the ability of the class members to protect their interests. Further,
7 the claims of the individual members of the class are not sufficiently large to warrant vigorous
8 individual prosecution considering all of the concomitant costs and expenses attending thereto.

9 **FIRST CAUSE OF ACTION**

10 **MINIMUM WAGE VIOLATIONS**

11 **(AGAINST ALL DEFENDANTS)**

12 24. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

13 25. Wage Order 1, § 4 and Labor Code §§ 1197 and 1182.12 establish the right of
14 employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor
15 Code §§ 1194 and 1194.2 provide that an employee who has not been paid the legal minimum
16 wage as required by Labor Code § 1197 may recover the unpaid balance plus attorneys' fees and
17 costs of suit, as well as liquidated damages in an amount equal to the unpaid wages, and interest
18 accrued thereon.

19 26. At all relevant times, Defendants failed to conform their pay practices to the
20 requirements of the law, including, but not limited to, by failing to pay for all hours actually
21 worked. Thus, Plaintiff and members of the Minimum Wage Class were not compensated for all
22 hours worked including, but not limited to, all hours they were subject to the control of Defendants
23 and/or suffered or permitted to work under the California Labor Code and Wage Order 1.

24 27. California Labor Code § 1198 makes unlawful the employment of an employee
25 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
26 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
27 those employees the unpaid balance of the unpaid wages as well as liquidated damages in an
28 amount equal to the wages due, and interest thereon.

28. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but not limited to unpaid wages and lost interest, in an amount to be established at trial, and they are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and Wage Order 1.

29. Defendants' practice and uniform administration of corporate policy regarding illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated damages, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 558, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

30. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

31. This cause of action is brought pursuant to Labor Code §§ 204, 510, 1194, and 1198, which provide that non-exempt employees are entitled to all overtime wages and compensation for all overtime hours worked and provide a private right of action for the failure to pay all overtime compensation for overtime work performed.

32. At all times relevant herein, Defendants were required to properly compensate non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime hours worked pursuant to California Labor Code § 1194 and Wage Order 1. Wage Order 1, § 3 requires an employer to pay an employee “one and one-half (1½) times the employee’s regular rate of pay” for work in excess of 8 hours per workday and/or in excess of 40 hours of work in the workweek. Defendants caused Plaintiff to work overtime hours but did not compensate Plaintiff or members of the Overtime Class with one and one-half times their regular rate of pay for such hours.

33. The foregoing policies and practices are unlawful and create an entitlement to

1 recovery by Plaintiff and members of the Overtime Class in a civil action for the unpaid amount
2 of overtime premiums owing, including interest thereon, statutory penalties, attorneys' fees, and
3 costs of suit according to California Labor Code §§ 204, 210, 216, 510, 1194, and 1198; and Code
4 of Civil Procedure § 1021.5.

5 **THIRD CAUSE OF ACTION**

6 **MEAL PERIOD VIOLATIONS**

7 **(AGAINST ALL DEFENDANTS)**

8 34. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

9 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
10 failed in their affirmative obligation to provide all of their non-exempt employees in California,
11 including Plaintiff and members of the Meal Period Class, with all legally-compliant meal periods
12 in accordance with the mandates of the California Labor Code and Wage Order 1, § 11. Despite
13 Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members
14 of the Meal Period Class at their respective regular rates of compensation, in accordance with
15 California Labor Code §§ 204, 210, 226.7, and 512.

16 36. As a result, Defendants are responsible for paying premium compensation for meal
17 period violations including interest thereon, statutory penalties, civil penalties, attorneys' fees,
18 and costs of suit according to California Labor Code §§ 226.7, 512, 558, and 1198 and Wage
19 Order 1, and Civil Code §§ 3287(b) and 3289.

20 **FOURTH CAUSE OF ACTION**

21 **REST PERIOD VIOLATIONS**

22 **(AGAINST ALL DEFENDANTS)**

23 37. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

24 38. Wage Order 1, § 12 and California Labor Code §§ 226.7, 516 and 558 establish
25 the right of employees to be provided with a rest period of at least ten (10) minutes for each four
26 (4) hour period worked, or major fraction thereof. Despite Defendants' failure to authorize and
27 permit Plaintiff and members of the Rest Period Class to take all legally complaint rest periods,
28 Defendants did not pay these individuals an additional hour of pay at their respective regular rate

1 for the rest periods that they failed to authorize and permit them to take, as required by Labor
2 Code § 226.7.

3 39. Defendants' policies and practices described herein are unlawful and create an
4 entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the
5 unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, civil
6 penalties, attorneys' fees, and costs of suit according to California Labor Code §§ 226.7, 516,
7 558, and 1198 and Wage Order 1, and Civil Code §§ 3287(b) and 3289.

8 **FIFTH CAUSE OF ACTION**

9 **WAGE STATEMENT VIOLATIONS**

10 **(AGAINST ALL DEFENDANTS)**

11 40. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

12 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants
13 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
14 and members of the Wage Statement Class with complete and accurate itemized wage statements
15 in violation of Labor Code § 226 *et seq.*

16 42. Defendants' failures in furnishing Plaintiff and Wage Statement Class members
17 with complete and accurate itemized wage statements resulted in injury, as said failures deprived
18 them of the information necessary to identify the discrepancies in Defendants' reported data.

19 43. Defendants' failures create an entitlement to recovery by Plaintiff and members of
20 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
21 Code § 226 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and
22 costs of suit according to California Labor Code § 226 *et seq.*

23 **SIXTH CAUSE OF ACTION**

24 **WAITING TIME PENALTIES**

25 **(AGAINST ALL DEFENDANTS)**

26 44. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

27 45. This cause of action is brought pursuant to Labor Code §§ 201-203, which require
28 an employer to pay all wages immediately at the time of termination of employment in the event

1 the employer discharges the employee or the employee provides at least 72 hours of notice of
2 his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her
3 intent to quit, said employee's wages become due and payable not later than 72 hours upon said
4 employee's last date of employment.

5 46. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them
7 at their termination, including, among other things, all earned minimum and overtime wages and
8 all meal and rest period premiums owed.

9 47. Further, Plaintiff is informed and believes, and based thereon alleges, that as a
10 matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members
11 of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant
12 to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was
13 willful within the meaning of Labor Code § 203.

14 48. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
15 Time Class their earned wages upon separation from employment results in a continued payment
16 of wages up to thirty days from the time the wages were due. Therefore, Plaintiff and members
17 of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus
18 reasonable attorneys' fees and costs of suit.

19 **SEVENTH CAUSE OF ACTION**

20 **UNFAIR COMPETITION**

21 **(AGAINST ALL DEFENDANTS)**

22 49. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

23 50. Defendants have engaged, and continue to engage, in unfair and/or unlawful
24 business practices in California in violation of California Business and Professions Code § 17200
25 *et seq.*, by: (a) failing to pay Plaintiff and members of the Overtime Class all earned overtime
26 wages; (b) failing to pay Plaintiff and members of the Minimum Wage Class at least the statutory
27 minimum wage for all hours worked; (c) failing to provide all required meal periods to Plaintiff
28 and members of Meal Period Class, and/or failing to pay them meal period premiums payments;

(d) failing to authorize and permit all required duty-free rest periods to Plaintiff and members of the Rest Period Class, and/or failing to pay them rest period premiums payments; (e) failing to issue accurate, itemized wage statements to Plaintiff and members of the Wage Statement Class; and (f) failing to pay Plaintiff and members of the Waiting Time Class all wages due at separation of employment.

51. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff and continues to deprive members of the Classes of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

52. Because Plaintiff was and is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff, for himself and on behalf of the members of the Classes, seeks full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

53. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution, to secure injunctive relief on behalf of Plaintiff and Defendants' current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

EIGHTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)

54. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

55. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due

1 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
2 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
3 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each
4 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
5 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
6 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
7 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
8 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
9 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
10 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each
11 subsequent violation per employee per pay period for those violations of the Labor Code for
12 which no civil penalty is specifically provided, based on the following Labor Code violations:

- 13 a. Failing to pay the statutory minimum wage for all hours worked to Plaintiff, the
14 Minimum Wage Class, and other aggrieved employees in violation of Labor Code
15 §§ 204, 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- 16 b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all
17 earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194,
18 and 1198;
- 19 c. Failing to provide meal periods as required by law, and failing to pay meal period
20 premiums, to Plaintiff, the Meal Period Class, and other aggrieved employees at
21 these employees' respective regular rates of compensation in violation of Labor
22 Code §§ 226.7, 512, 558, and 1198;
- 23 d. Failing to authorize and permit all required rest periods, and failing to pay rest
24 period premiums, to Plaintiff, the Rest Period Class, and other aggrieved
25 employees at these employees' respective regular rates of compensation in
26 violation of Labor Code §§ 226.7, 516, 558, and 1198;
- 27 e. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved
28 employees with accurate and compliant itemized wage statements in violation of

Labor Code § 226;

f. Failing to timely pay all final wages due to Plaintiff, the Waiting Time Class, and other aggrieved employees at the time of separation in violation of Labor Code §§ 201, 202, and 203;

g. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and

h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 1174 and 1198.

56. On July 22, 2024, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in Paragraph 55 (a)-(h). Now that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

57. Based on the foregoing, Plaintiff seeks to represent himself and all Aggrieved Employees, as defined by Labor Code § 2699(c).

58. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which he is entitled to receive under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;

1 4. Upon the First Cause of Action, for payment of minimum wages, liquidated
2 damages, and penalties according to proof pursuant to Labor Code §§ 204, 1182.12, 1194, 1194.2,
3 1197, and 1198

4 5. Upon the Second Cause of Action, for compensatory, consequential, general, and
5 special damages according to proof pursuant to Labor Code §§ 204, 510, 1194, and 1198;

6 6. Upon the Third Cause of Action, for compensatory, consequential, general, and
7 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558

8 7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and
9 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

10 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §
11 226;

12 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
13 Labor Code §§ 201-203;

14 10. Upon the Seventh Cause of Action, for injunctive relief and restitution to Plaintiff
15 and members of the Classes of all money and/or property unlawfully acquired by Defendants by
16 means of any acts or practices declared by this Court to be in violation of Business and Professions
17 Code § 17200 *et seq.*;

18 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other
19 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
20 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
21 each failure to pay each employee and \$200 for each subsequent violation or willful or intentional
22 violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the
23 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
24 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
25 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
26 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
27 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
28 each initial violation and \$200 for each subsequent violation per employee per pay period for

1 those violations of the Labor Code for which no civil penalty is specifically provided, based on
2 the Labor Code violations identified in Paragraph 55 (a)-(h);

3 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor
4 Code §§ 218.6 and 1194(a) and Civil Code §§ 3287 and 3289;

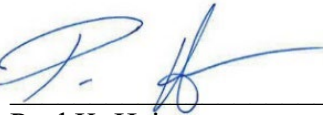
5 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code
6 §§ 226, 1194 *et seq.*, and 2699(g); and Code of Civil Procedure § 1021.5; and

7 14. For such other and further relief the Court may deem just and proper.

8
9
10 Dated: September 26, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

11
12 By:



Paul K. Haines
Attorneys for Plaintiff

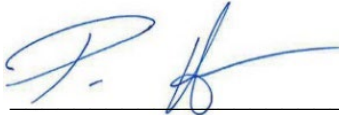
13
14
15 **DEMAND FOR JURY TRIAL**

16 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

17
18 Dated: September 26, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

19
20 By:



Paul K. Haines
Attorneys for Plaintiff